

§ 386.7

(b) *Type of service.* A person may serve documents by personal delivery utilizing governmental or commercial entities, U.S. mail, commercial mail delivery, and upon prior written consent of the parties, facsimile. Written consent for facsimile service must specify the facsimile number where service will be accepted. When service is made by facsimile, a copy will also be served by any other method permitted by this section. Facsimile service occurs when transmission is complete.

(c) *Certificate of service.* A certificate of service will accompany all documents served in a proceeding under this Part. The certificate must show the date and manner of service, be signed by the person making service, and list the persons served in accordance with § 386.7.

(d) *Date of service.* A document will be considered served on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Valid service.* A properly addressed document, sent in accordance with this subpart, which was returned, unclaimed, or refused, is deemed to have been served in accordance with this subpart. The service will be considered valid as of the date and the time the document was mailed, or the date personal delivery of the document was refused. Service by delivery after 5 p.m. in the time zone in which the recipient will receive delivery is deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(f) *Presumption of service.* There shall be a presumption of service if the document is served where a party or a person customarily receives mail or at the address designated in the entry of appearance. If an entry of appearance has been filed on behalf of the party, service is effective upon service of a document to its representative.

[70 FR 28480, May 18, 2005]

§ 386.7 Filing of documents.

(a) *Address and method of filing.* A person serving or tendering a document

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for filing must personally deliver or mail one copy of each document to all parties and counsel or their designated representative of record if represented. A signed original and one copy of each document submitted for the consideration of the Assistant Administrator, an Administrative Law Judge, or Hearing Officer must be personally delivered or mailed to: U.S. DOT Dockets 400 7th Street, SW., Room PL-401, Washington, DC 20590. A person will serve a copy of each document on each party in accordance with § 386.6 of this subpart.

[70 FR 28480, May 18, 2005]

§ 386.8 Computation of time.

(a) *Generally.* In computing any time period set out in these rules or in an order issued hereunder, the time computation begins with the day following the act, event, or default. The last day of the period is included unless it is a Saturday, Sunday, or legal Federal holiday in which case the time period will run to the end of the next day that is not a Saturday, Sunday, or legal Federal holiday. All Saturdays, Sundays, and legal Federal holidays except those falling on the last day of the period will be computed.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry is the date the order is served.

(c) *Computation of time for delivery by mail.* (1) Service of all documents is deemed effected at the time of mailing.

(2) Documents are not deemed filed until received by Dockets.

(3) Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

[70 FR 28480, May 18, 2005]

Subpart B—Commencement of Proceedings, Pleadings

§ 386.11 Commencement of proceedings.

(a) *Driver qualification proceedings.* These proceedings are commenced by the issuance of a determination by the Director, Office of Truck and Bus

Standards and Operations, in a case arising under § 391.47 of this chapter or by the issuance of a letter of disqualification.

(1) Such determination and letters must be accompanied by the following:

(i) A citation of the regulation under which the action is being taken;

(ii) A copy of all documentary evidence relied on or considered in taking such action, or in the case of voluminous evidence a summary of such evidence;

(iii) Notice to the driver and motor carrier involved in the case that they may petition for review of the action;

(iv) Notice that a hearing will be granted if the Assistant Administrator determines there are material factual issues in dispute;

(v) Notice that failure to petition for review will constitute a waiver of the right to contest the action; and

(vi) Notice that the burden or proof will be on the petitioner in cases arising under § 391.47 of this chapter.

(2) At any time before the close of hearing, upon application of a party, the letter or determination may be amended at the discretion of the administrative law judge upon such terms as he/she approves.

(b) *Notice of Violation.* The Agency may issue a Notice of Violation as a means of notifying any person subject to the rules in this part that it has received information (*i.e.*, from an investigation, audit, or any other source) wherein it has been alleged the person has violated provisions of the FMCSRs, HMRs, or FMCCRs. The notice of violation serves as an informal mechanism to address compliance deficiencies. If the alleged deficiency is not addressed to the satisfaction of the Agency, formal enforcement action may be taken in accordance with paragraph (c) of this section. A notice of violation is not a prerequisite to the issuance of a Notice of Claim. The notice of violation will address the following issues, as appropriate:

(1) The specific alleged violations.

(2) Any specific actions the Agency determines are appropriate to remedy the identified problems.

(3) The means by which the notified person can inform the Agency that it has received the notice of violation and

either has addressed the alleged violation or does not agree with the Agency's assertions in the notice of violation.

(4) Any other relevant information.

(c) *Civil penalty proceedings.* These proceedings are commenced by the issuance of a Notice of Claim.

(1) Each Notice of Claim must contain the following:

(i) A statement setting forth the facts alleged.

(ii) A statement of the provisions of law allegedly violated by the respondent.

(iii) The proposed civil penalty and notice of the maximum amount authorized to be claimed under statute.

(iv) The time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim.

(2) In addition to the information required by paragraph (c)(1) of this section, the Notice of Claim may contain such other matters as the Agency deems appropriate.

(3) In proceedings for collection of civil penalties for violations of the motor carrier safety regulations under the Motor Carrier Safety Act of 1984, the Agency may require the respondent to post a copy of the Notice of Claim in such place or places and for such duration as the Agency may determine appropriate to aid in the enforcement of the law and regulations.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 56 FR 10182, Mar. 11, 1991; 65 FR 7756, Feb. 16, 2000; 70 FR 28480, May 18, 2005]

§ 386.12 Complaint.

(a) *Complaint of substantial violation.* Any person may file a written complaint with the Assistant Administrator alleging that a substantial violation of any regulation issued under the Motor Carrier Safety Act of 1984 is occurring or has occurred within the preceding 60 days. A substantial violation is one which could reasonably lead to, or has resulted in, serious personal injury or death. Each complaint must be signed by the complainant and must contain:

(1) The name, address, and telephone number of the person who files it;